

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Chapter 11

Case No.
01-01139 JKF
W.R. Grace & Co., et al.,

Debtors. (Jointly Administered)

X

* * * CONFIDENTIAL * * *

— — —
May 13, 2009
— — —

DEPOSITION of RICHARD FINKE, held
at the offices of Kirkland & Ellis, 655
Fifteenth Street, N.W., Washington, DC,
commencing at 9:32 A.M., on the above
date, before Lisa Lynch, a Registered
Merit Reporter, New Jersey Certified Court
Reporter, License No. XI00825, and
Certified Realtime Reporter

— — —
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EXHIBITS

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<p>1 RICHARD FINKE,</p> <p>2 having been sworn by the Notary</p> <p>3 Public of the States of New York</p> <p>4 and New Jersey, was examined and</p> <p>5 testified as follows:</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. BROWN:</p> <p>9 Q. Good morning, Mr. Finke.</p> <p>10 My name is Michael Brown. I represent One</p> <p>11 Beacon, Seaton, Geico and Republic for the</p> <p>12 objecting insurance companies in the Grace</p> <p>13 bankruptcy. You've been deposed several</p> <p>14 times before, correct?</p> <p>15 A. Yes, I have.</p> <p>16 Q. Okay. So we can dispense</p> <p>17 with the formalities of what a</p> <p>18 deposition's all about?</p> <p>19 A. Yes, we can.</p> <p>20 Q. Okay.</p> <p>21 MS. HARDING: Michael,</p> <p>22 would you mind if I made a quick</p> <p>23 statement on the record?</p> <p>24 MR. BROWN: Sure.</p>	<p>1 further than seven hours to get to</p> <p>2 the appropriate inquiry as to how</p> <p>3 the Plan operates. So I just</p> <p>4 wanted to get that on the record.</p> <p>5 MR. BROWN: Okay.</p> <p>6 Actually, that's helpful. Maybe I</p> <p>7 could follow up with a question for</p> <p>8 Mr. Finke.</p> <p>9 Q. Mr. Finke, have you</p> <p>10 reviewed Mr. Lockwood's Rule 30(b)(6)</p> <p>11 deposition transcript?</p> <p>12 A. Yes, I have.</p> <p>13 Q. Okay. Is there anything</p> <p>14 that you read in that transcript that you</p> <p>15 disagreed with?</p> <p>16 A. No, nothing of substance.</p> <p>17 Q. Okay. How about anything</p> <p>18 not of substance?</p> <p>19 A. There are a few occasions,</p> <p>20 I think, where I either would have worded</p> <p>21 something differently or where I think Mr.</p> <p>22 Lockwood may have been either in error --</p> <p>23 might have been in error depending on</p> <p>24 whether he was -- depending on the</p>

1 context. Let me give you one example of
2 that.

3 **Q. Sure.**

4 A. He, I think, made a
5 statement at one point where he equated
6 asbestos in place coverage or insurance
7 coverage with the asbestos insurance
8 reimbursement agreements. I believe he
9 said he thought they were the same thing,
10 and perhaps in substance or in concept
11 they are. I'm not an insurance lawyer,
12 but I know that under the Plan
13 definitionally the definition of asbestos
14 (sic) in place insurance coverage
15 specifically excludes asbestos
16 reimbursement agreements from the
17 definition.

18 **Q. Okay.**

19 A. Which would suggest they
20 are not the same.

21 **Q. All right. I'm going to**
22 **suggest that Miss Alcabes, or one of the**
23 **people whose issue that is, may want to**
1 **follow up with you on that point.**

1 A. Sure.

2 **Q. But let's pass on that.**

3 **Other than what you've just**
4 **described, is there anything else in Mr.**
5 **Lockwood's deposition transcript that the**
6 **debtors disagreed with?**

7 A. Nothing that comes to
8 mind.

9 MR. BROWN: Okay. Let me
10 have the first exhibit marked, and
11 can we go off the record for a
12 second.

13 (Off the record.)

14 (Notice of Deposition of
15 Debtors Pursuant to Rule
16 30(b)(6) marked for identification
17 as Exhibit Finke-1.)

18 (Document entitled W.R.
19 Grace/Confirmation Hearing 30(b)(6)
20 Deposition Notice marked for
21 identification as Exhibit
22 Finke-2.)

23 BY MR. BROWN:

24 **Q. Mr. Finke, I'm going to put**

1 **before you two exhibits marked -- we're**
2 **using the term Finke 30(b)(6) 1 and Finke**
3 **30(b)(6) 2. For shorthand during the**
4 **deposition I'll just refer to them as**
5 **Finke-1 and Finke-2. Could you identify**
6 **Finke-1 for me, please?**

7 A. It is a Notice of
8 Deposition of Debtors Pursuant to Rule
9 30(b)(6) served by One Beacon, Seaton,
10 Geico and Columbia.

11 **Q. Going forward, it would be**
12 **more accurate to refer to Columbia as**
13 **Republic. I know it says Columbia there.**
14 **The date on here is April 28th, 2009 and**
15 **the site is Drinker Biddle & Reath's**
16 **offices but we obviously changed those by**
17 **agreement after this was scheduled.**

18 **Is it your understanding that**
19 **you're appearing here today in response to**
20 **this Rule 30(b)(6) notice?**

21 A. Yes.

22 **Q. And there were several**
23 **others served on you as well?**

24 A. Correct.

1 **Q. Correct, all right.**

2 **If you look at what's been marked**
3 **as Finke-2, can you identify that for**
4 **me?**

5 A. It is a chart 18 pages long
6 entitled W.R. Grace/Confirmation Hearing
7 30(b)(6) Deposition Notice Witness
8 Designations.

9 **Q. Okay. And is it your**
10 **understanding that this document was**
11 **prepared by your counsel?**

12 A. Yes, that's my
13 understanding.

14 **Q. And have you seen it before**
15 **today?**

16 A. Yes.

17 **Q. Okay. And am I correct**
18 **that it basically lists all the various**
19 **topics from all the 30(b)(6) notices that**
20 **were served on Grace and then designates**
21 **one of, I believe, three individuals to**
22 **testify about the various topics?**

23 A. I would agree that it
24 includes all 30(b)(6) notices that have

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1 you now what has been marked as Exhibit 8
2 to this deposition and what is Exhibit 1
3 to the Exhibit Book. First question is:
4 Would you identify the document, please?

5 A. Yes. I think Exhibit 8 is
6 the First Amended Joint Plan of
7 Reorganization that was filed by Grace and
8 its co-proponents.

9 Q. Okay.

10 A. And the date is February --
11 date on the document is February 27,
12 2009.

13 Q. Okay. Have you reviewed
14 this document in its entirety?

15 A. Yes.

16 Q. How many times?

17 MS. HARDING: You mean in
18 its entirety how many times?

19 MR. BROWN: Well, let's
20 start-up with that question.

21 A. Interpreting review as
22 meaning a detailed word-for-word reading
23 of the entire document, I would say
1 once.

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1 Q. Okay. And how many times
2 have you partially reviewed the
3 document?

4 A. Many times.

5 Q. Okay. Do you understand
6 it?

7 A. I have an understanding of
8 it. I would not profess to have a
9 complete understanding of it.

10 Q. Okay. Are there particular
11 provisions in the Plan that you're quite
12 certain you don't understand?

13 MS. HARDING: Object to
14 form and relevance and concern that
15 we're not going to the seven
16 hours -- I mean, if you have a
17 specific question about a specific
18 provision that you don't understand
19 as an insured, then I think you
20 should ask him questions about
21 that. I think...

22 MR. BROWN: Is that an
23 instruction not to answer the
24 question?

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1 MS. HARDING: No, it's
2 not.

3 MR. BROWN: Okay. It's
4 just --

5 MS. HARDING: It's just an
6 objection that...

7 A. I'm sure that I do not
8 understand the annex or annexes that I
9 believe relate to tax issues.

10 MS. HARDING: I guess --
11 are you asking him in his personal
12 capacity?

13 MR. BROWN: I don't think
14 he's here in his personal capacity.
15 I think he's here in his capacity
16 as a designee for W.R. Grace or for
17 the debtors.

18 MS. HARDING: Okay. Are
19 you asking him if there's anybody
20 at W.R. Grace that has an
21 understanding of different
22 provisions of the Plan as lawyers
23 and --

24 MR. BROWN: I think he's

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1 here to testify about the operation
2 of the Plan. I think that was --
3 isn't he? So my question is
4 what --

5 MS. HARDING: He's here to
6 answer questions to help you
7 understand the Plan.

8 MR. BROWN: Barbara, can
9 we --

10 MS. HARDING: So I think if
11 there are questions that you don't
12 understand, I think you should ask
13 him those.

14 MR. BROWN: I would like to
15 know whether there are particular
16 provisions in the Plan that the
17 witness can identify that he is not
18 familiar with or that he doesn't
19 understand.

20 MS. HARDING: Well, I think
21 he's asked and answered, so...

22 A. Yes, for myself there are
23 provisions that I do not understand, such
24 as the tax annexes. This --

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MS. HARDING: Which also were not designated 30(b)(6) topics by any person who --

MR. BROWN: Can I ask that we just let the witness answer the question?

MS. HARDING: Well, I think if you want to ask him questions about topics that were designated that you asked him to become familiar with, then --

MR. BROWN: I didn't ask him a question about the tax annex. It was in his answer.

MS. HARDING: Well, that's because you asked him about any provision of the Plan. You asked -- we tried to prepare the witness to answer questions about topics that everybody asked about.

MR. BROWN: All right. I'll ask my question again. If you have an objection and you want to instruct him not to answer, then do

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your attention to page 87 of the Plan, Section 7.15, and what I would like you to do, because I have a series of questions about it, is why don't you take a few moments to review Section 7.15. In fact, if you want to take a break at this point --

MR. BROWN: Does that make sense? Okay.

MS. HARDING: Well, I mean, how long is it, again?

THE WITNESS: Seven pages.

MS. HARDING: Five-minute break?

MR. BROWN: That's fine, yes.

(Recess taken.)

BY MR. BROWN:

Q. Mr. Finke, we had a short break and before that I directed your attention to Section 7.15 of the Plan entitled Insurance Neutrality. Did you have an opportunity to review that section

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it and we'll move on.

BY MR. BROWN:

Q. Mr. Finke, as you sit here today looking at the Joint Plan, can you identify particular provisions that you do not understand?

MS. HARDING: Object, asked and answered, but answer one more time if you'd like.

A. In addition to what I've already identified, the provision on the warrants is not entirely clear to me. And if I spent the time to go through the document page by page, there may be a few other sections that I don't feel very comfortable with in terms of the level of my understanding.

Speaking on behalf of W.R. Grace as a whole, there are individuals who understand those sections and, taken as a whole, I think W.R. Grace does have a good understanding of the Plan.

Q. Okay. Well, let me take your counsel up on her offer and direct

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during the break?

A. Yes.

Q. This was not one of the sections that you mentioned in your prior testimony that you were -- that you did not understand. Is it safe to say that this is a provision that you do understand? And I'm asking that question, really, in your capacity as an individual and as the designee on this subject for the debtors.

MS. HARDING: Object to form.

A. Yes, I believe I understand it.

Q. Okay. Can you turn to Section 11.9 of the Plan, and that's entitled Exculpation, and if you'd take a moment to review that section.

(The witness reviews the document.)

A. Okay.

Q. Given the language in Section 7.15, am I correct that asbestos insurance entities are not bound by the

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1 **exculpation provision in Section 11.9 of**
2 **the Plan?**

3 MR. LIESEMER: Object to
4 the form.

5 MS. HARDING: Object to the
6 form.

7 A. I believe they -- the
8 asbestos insurance companies are bound by
9 Section 11.9.

10 **Q. They are bound?**

11 A. Yes.

12 **Q. If you go back to 7.15,**
13 **where is that set forth?**

14 MS. HARDING: Object to
15 form.

16 MR. LIESEMER: Same
17 objection.

18 A. Well, of course, there's no
19 provision in Section 7.15 that
20 specifically states that the insurers are
21 bound by Section 11.9. I assume that's
22 not what you're asking, but -- well,
23 literally, I think that is what you asked,
24 so --

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1 **Q. Yes, that is what I asked.**

2 A. -- that's my answer then.

3 **Q. So there's nothing in 7.15**
4 **that says that they're bound by 11.9 but**
5 **your testimony is that they are in fact**
6 **bound by 11.9?**

7 A. Yes.

8 **Q. Are there any other**
9 **provisions in the Plan that are not**
10 **specifically spelled out in Section 7.15**
11 **for which the insurers are bound**
12 **notwithstanding Section 7.15?**

13 MS. HARDING: Object to
14 form, and I think it misstates his
15 testimony.

16 THE WITNESS: I'm sorry.
17 Could you read back the question?

18 (The reporter reads the
19 pending question.)

20 MS. HARDING: Object to
21 form. I think it's confusing,
22 speculative. I don't see how you
23 can possibly answer that question.
24 But if you can answer it, go ahead.

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1 It also calls for a legal
2 conclusion.

3 (The witness reviews the document.)

4 A. Okay. I would direct you
5 to Section 7.15(h) which states that "the
6 asbestos insurance entities shall be
7 subject to the releases and injunctions to
8 the extent described in this Plan" so my
9 answer to your question is that I believe
10 any provisions in the Plan that would
11 constitute a release or an injunction, and
12 I would include 11.9 in that language, are
13 binding on the asbestos insurance
14 entities.

15 **Q. So your testimony is that**
16 **7.15(h) includes through its language**
17 **Section 11.9?**

18 A. Yes, that is how I read
19 it.

20 **Q. What consideration, if any,**
21 **are Grace's insureds getting under the**
22 **Plan in exchange for the exculpation**
23 **provision in 11.9?**

24 MR. LIESEMER: Object to

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1 form.

2 MS. HARDING: Object to
3 form.

4 A. All right. First, your
5 question assumes that the insurance
6 entities would be entitled to some
7 consideration in exchange for being bound
8 by Section 11.9. I don't know that to be
9 the case. I don't know that they're not
10 entitled to it either.

11 But as far as consideration, if one
12 had to justify being bound by Section 11.9
13 on the basis of consideration, I think the
14 answer with respect to asbestos insurance
15 entities would also apply to all parties
16 involved in the Chapter 11, which is that
17 the entities and individuals covered by
18 the exculpation have been active in the
19 business of these Chapter 11 cases, they
20 have had to take positions, make
21 arguments, make decisions, et cetera, that
22 affect one or more parties involved in the
23 Chapter 11 cases and have thereby exposed
24 themselves to potential liability, I

1 suppose, for their acts or omissions. And
 2 the Chapter 11 itself could not proceed to
 3 the point of resolution without the
 4 efforts of these entities and these
 5 individuals. So to the extent -- so there
 6 is a -- in order to encourage and
 7 facilitate the activities of the parties
 8 listed in Section 11.9, it is my
 9 understanding that it is common in these
 10 types of bankruptcies to provide
 11 exculpation of those entities and
 12 individuals for their activities, and I'm
 13 quoting here from 11.9, "In connection
 14 with or arising out of the Chapter 11
 15 cases." It is their participation and the
 16 fruits of their participation that would
 17 constitute consideration.

18 **Q. I want to circle back to a**
 19 **question that I asked a few questions ago**
 20 **concerning 7.15 and I asked you a question**
 21 **to the effect of other than what's**
 22 **specifically set forth in Section 7.15 are**
 23 **there any other provisions in the Plan or**
 24 **Plan documents that are binding upon**

1 Grace's insurers, and in answer to that
 2 question you referred me to subsection (h)
 3 and how 11.9 in the debtor's view was
 4 encompassed within the language of (h).

5 So I want to go back to that
 6 question and ask: Other than 11.9, is
 7 there anything else?

8 A. I'm --

9 MS. HARDING: Object to
 10 form. I think it's confusing
 11 and I'll leave it at that. If you
 12 can answer, go ahead.

13 A. I believe there is a more
 14 general provision relating to the binding
 15 nature of court orders, findings, et
 16 cetera. That is what I was looking for
 17 initially in response to your answer and
 18 then I remembered the provision in 7.15(h)
 19 and so I've directed you to that
 20 provision. If you want me to spend the
 21 time -- I do not know where in that Plan
 22 that more general provision is that I have
 23 in mind.

24 **Q. Well --**

1 A. I could spend the time to
 2 look for it if you'd like.

3 **Q. No, let's try this a little**
 4 **differently. Look at 7.15(a).**

5 A. Okay.

6 **Q. It says "Except to the**
 7 **extent provided in this Section 7.15,**
 8 **notwithstanding anything to the contrary**
 9 **in the Confirmation Order, the Plan or any**
 10 **of the Plan documents -- nothing in the**
 11 **Confirmation Order, the Plan or the Plan**
 12 **documents, including any other provision**
 13 **that purports to be preemptory or**
 14 **supervening, shall in any way operate to**
 15 **or have the effect of impairing any**
 16 **asbestos insurance entity's legal,**
 17 **equitable or contractual rights, if any,**
 18 **in any respect." Have I read that**
 19 **correctly?**

20 A. I believe so.

21 **Q. Okay. And what I'm asking**
 22 **is: Given that broad statement, are there**
 23 **any other provisions in the plan that are**
 24 **not set forth in 7.15 that override the**

1 language in 7.15(a)?

2 MS. HARDING: Object to
 3 form.

4 A. Based on the language of
 5 7.15(a), and if I'm understanding it as it
 6 was intended, it states by its terms that
 7 nothing else in the Plan or any of the
 8 Plan documents would operate, you know, to
 9 impair the -- an asbestos insurance
 10 entity's rights.

11 **Q. So is your answer no?**

12 MS. HARDING: Object, asked
 13 and answered, but...

14 A. Based on the language in
 15 7.15(a), my answer would be no, subject
 16 to -- subject to wanting to review the
 17 remainder of the Plan because, as I
 18 mentioned, I do have in mind that there is
 19 one or more general provisions concerning
 20 the applicability or binding nature of
 21 court orders, court findings and the like.

22 And while I understand 7.15(a)
 23 appears to act in such a way that would
 24 make my proviso in my answer irrelevant, I

1 would still feel more comfortable having
2 found and reviewed those other provisions
3 before giving an unequivocal "no".

4 **Q. Let's do this because we**
5 **don't want to waste time. Why don't we --**
6 **I'm going to continue on. We'll obviously**
7 **have breaks. And during one of those**
8 **breaks, why don't you look for whatever**
9 **provision it is that you -- or provisions**
10 **that you think you're talking about and**
11 **then when we return from our break, even**
12 **if I'm not the questioner, would you bring**
13 **those one or two sections up to me? That**
14 **will save us some time.**

15 A. That's fine.

16 **Q. All right. I want to focus**
17 **your attention now on 7.15(b).**

18 (The witness reviews the document.)

19 A. Okay.

20 **Q. You see on the second line**
21 **there rolling over to the third line the**
22 **phrase "The beneficiaries of the Asbestos**
23 **PI Trust"? Do you see that?**

1 A. Yes.

1 **know that it is, per se, defined.**

2 MS. HARDING: Where is it
3 in the TDP?

4 MR. BROWN: It's in Section
5 5.13.

6 MR. COHN: Is that on page
7 49 of the TDP?

8 MR. BROWN: I don't know
9 the page number.

10 THE WITNESS: Page 49,
11 yes.

12 A. Based on Section 5.13 of
13 the TDP and on the basis that a holder of
14 an indemnified insured TDP claim
15 potentially may have that claim paid by
16 the PI Trust in accordance with Section
17 5.13, I would interpret such a holder to
18 be a beneficiary of the PI Trust.

19 **Q. Okay. So let's just take**
20 **one of my clients, for example. Let's**
21 **take Seaton Insurance Company. If Seaton**
22 **Insurance Company has an indemnified**
23 **insured TDP claim, then Seaton Insurance**
24 **Company, as I understand 7.15(b), is bound**

1 **Q. What do you understand that**
2 **term to mean?**

3 MR. LIESEMER: Object to
4 the form.

5 **Q. What does that term mean?**

6 A. I understand it to mean
7 holders of asbestos PI claims.

8 **Q. Okay. And does that**
9 **include holders of indirect Asbestos PI**
10 **Trust claims?**

11 MR. LIESEMER: Object to
12 form.

13 A. Yes.

14 **Q. And does it include**
15 **indemnified insurer -- does it -- excuse**
16 **me.**

17 **Does that term include the holders**
18 **of indemnified insurer TDP claims?**

19 MR. LIESEMER: Object to
20 the form.

1 A. Is that a defined term?

22 **Q. Good question. It is a**
23 **term that appears in Section 5.13 of the**
24 **Trust Distribution Procedures. I don't**

1 **by the Plan, the Plan documents and the**
2 **confirmation order?**

3 MR. LIESEMER: Object to
4 the form.

5 MS. HARDING: Object to the
6 form.

7 **Q. Do I have that correct?**

8 A. I believe so, yes.

9 **Q. Okay. And is it bound by**
10 **the Plan, Plan documents and confirmation**
11 **order insofar as it may also be listed as**
12 **being a partially settled insurer?**

13 MS. HARDING: Object to the
14 form. And are you referring to
15 7.15(b)?

16 MR. BROWN: Yes.

17 MS. HARDING: Back to
18 7.15(b) when you asked that
19 question?

20 MR. BROWN: Yes.

21 A. I'm not sure I see the
22 connection between Section 5.13 of the TDP
23 and your question, if there is any.

24 The -- I believe the answer is they are

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1 bound to the same extent any asbestos
2 insurance entity is bound under the
3 Plan.

4 **Q. Mr. Finke, you understand,**
5 **don't you, that -- well, let's not do it**
6 **that way. Let's go to -- I think it's the**
7 **asbestos insurance transfer agreement.**

8 MS. HARDING: Is that one
9 of our exhibits?

10 MR. BROWN: No, I'm sorry,
11 it's not that. It's Exhibit 5.

12 **Q. Do you have Exhibit 5?**

13 A. Retained causes of action?

14 **Q. No. This is Exhibit 5 to**
15 **the Exhibit Book.**

16 A. To the Exhibit Book.

17 MS. HARDING: I have a
18 copy. It's not his but you can
19 look at it if you'd like.

20 MR. COHN: What is the
21 document?

22 MS. BAER: It's Exhibit 5
23 to the Exhibit Book, Schedule of
24 Settled Asbestos Insurers.

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1 **there are indemnity claims against the**
2 **debtor and to the extent that those are**
3 **asbestos-related, those fit within the**
4 **defined term "indemnified insured TDP**
5 **claims", correct?**

6 MS. HARDING: Object to
7 form.

8 MR. LIESEMER: Join.

9 MS. HARDING: Are you
10 looking for 7.15?

11 MS. ALCABES: 5.13.

12 MS. HARDING: There you go.

13 A. No, I don't agree.

14 MR. BROWN: Could you read
15 back the last question?

16 (The reporter reads the
17 requested portion.)

18 A. No, I don't agree. My
19 understanding of Section 5.13 is this
20 provision would take effect only upon
21 confirmation of the Plan since the
22 definition indicates, or requires, that
23 the indemnified insurer TDP claim is
24 channeled to the PI Trust, which it can't

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1 (Exhibit 5 to Exhibit Book,
2 Schedule of Settled Asbestos
3 Insurers Entitled to 524(g)
4 Protection marked for
5 identification as Exhibit
6 Finke-9.)

7 **Q. What I'd like you, Mr.**
8 **Finke -- first of all, why don't you**
9 **identify what we've just marked as Exhibit**
10 **9?**

11 A. Okay. Finke Exhibit 9 is
12 Exhibit 5 to the Exhibit Book. It is
13 entitled Schedule of Settled Asbestos
14 Insurers Entitled to 524(g) Protection.

15 **Q. Now, you understand, don't**
16 **you, that at least some of the insurance**
17 **companies that are listed on this schedule**
18 **have indemnity claims against the**
19 **debtors?**

20 MR. LIESEMER: Object to
21 the form of the question.

22 A. Yes, I believe that's
23 correct.

24 **Q. And to the extent that**

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1 be at this point.

2 **Q. All these questions are in**
3 **the context of the Plan being confirmed.**

4 A. Well, then I don't --

5 **Q. Let me back up. I think**
6 **the record's kind of muddled at this**
7 **point.**

8 A. Okay.

9 **Q. Why don't you -- if you**
10 **look at the schedule of settled asbestos**
11 **insurance companies, I believe you'd**
12 **testified -- that's Exhibit 9 -- I believe**
13 **you'd testified that some of the companies**
14 **that are listed on there have contractual**
15 **indemnity claims against the debtors.**

16 A. That was under the
17 assumption we were talking about current
18 claims. I didn't realize you had -- that
19 your questions were all in the context of
20 the assumption of a confirmed plan.

21 **Q. All right. If you look at**
22 **the schedule, you understand that the**
23 **insureds that are listed on here have**
24 **settlement agreements with the debtors,**

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1 correct?

2 A. Yes.

3 Q. And you also understand
4 that certain of those settlement
5 agreements have contractual indemnity
6 provisions in them, correct?

7 A. Yes.

8 Q. And I believe you testified
9 that those contractual indemnity
10 provisions are under the Plan to be
11 treated as indemnified insured TDP claims
12 under Section 5.13 of the TDP. Is that
13 correct?

14 A. No, no, that certainly
15 wasn't my intent.

16 Q. Okay. How are they being
17 treated under the Plan?

18 A. As indirect PI Trust
19 claims.

20 Q. Okay. Do you understand
21 indemnified insured TDP claims to be a
22 class of indirect PI Trust claims?

23 A. It appears to me to be
24 that, that they are the same. Or at least

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1 Q. Let's get back to the
2 insurance neutrality provision then, which
3 is 7.15.

4 A. Okay.

5 Q. Getting back to 7.15(b),
6 this line of questioning talked with or
7 started with the reference to the term,
8 the phrase, "the beneficiaries of the
9 Asbestos PI Trust".

10 A. Uh-huh.

11 Q. I'm a little confused by
12 your testimony at this point. If you are
13 the holder of an indemnified insurer TDP
14 claim post-confirmation, are you a
15 beneficiary of the Asbestos PI Trust?

16 MR. LIESEMER: Object to
17 the form of the question.

18 MS. HARDING: Object to
19 form.

20 A. Assuming for the sake of
21 argument such a claim could arise, my
22 understanding would be yes.

23 MR. BROWN: All right. I'm
24 going to shift gears. We'll mark

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1 I don't see a distinction. Whether they
2 are intended to be or not, I don't know.
3 Since we really were not involved in the
4 drafting of the TDP, my --

5 Q. The "we" you're referring
6 to is Grace?

7 A. Grace, yes. My bigger
8 problem is that once the plan is confirmed
9 I don't understand -- have not understood
10 and don't today how there can be such a
11 claim under 5.13 since my understanding of
12 the mechanics of the asbestos PI
13 channeling injunction is that any claim
14 against a settled insurer which is an
15 asbestos protected party would be barred
16 and that claim would be channeled to the
17 PI Trust and that that holder of that PI
18 claim, the sole resolution -- not
19 resolution -- the sole source for any
20 recovery for the holder of that claim is
21 the PI Trust.

22 So I have not understood, and still
23 don't, how any indemnified insurer TDP
24 claim could arise.

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1 another document. The document I'm
2 about to mark is one of our
3 settlement agreements so we can
4 mark this portion of the deposition
5 subject to the protective order but
6 what I would like to do with this
7 one, like we did with Mr. Posner,
8 to the extent that no one objects
9 to the extent that we, my clients,
10 would like to use this portion of
11 the testimony without having it
12 under seal, we would be able to do
13 so without asking all parties to
14 agree. Is that fair?

15 MS. HARDING: That's up to
16 you.

17 MR. BROWN: All right.

18 MR. LEWIS: Did you say
19 Mr. Posner?

20 MR. BROWN: Yes.

21 MR. LEWIS: Okay.

22 (Settlement Agreement
23 Bates stamped OB 1 through 33
24 marked for identification as

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1 Exhibit Finke-10.)

2 MS. HARDING: And as I
3 understand it, all parties are -- I
4 think all parties in this room have
5 agreed to the protective order.

6 MR. BROWN: I don't know.
7 Is Mr. Speights on the line?

8 Mr. Speights?

9 MS. BAER: We can put on
10 the record that Mr. Speights never
11 objected to the provisions of the
12 protective order.

13 MR. BROWN: Okay.

14 Q. Mr. Finke, you have before
15 you a document which has been marked
16 Finke-10 and I'd like you to take a few
17 moments to review it and then tell me
18 whether you have ever seen the document
19 before.

20 A. No, I have not.

21 Q. Okay. Can you turn to
22 pages 30 and 31?

23 MR. LIESEMER: Are you
1 referring to the Bates numbering?

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1 the document before.

2 A. Based on the --

3 MS. HARDING: To the extent
4 that you know.

5 THE WITNESS: Sorry.

6 A. Based on the signature
7 page, the parties are W.R. Grace & Co.,
8 W.R. Grace & Co.-Conn., Commercial Union
9 Insurance Company as successor in interest
10 to Employers Commercial Union Insurance
11 Company of America and Employers
12 Commercial Union Insurance Company and
13 American Employers Insurance Company.

14 Q. Okay. And would you agree
15 with me that the parties that executed
16 this document appear, at least from what
17 is on the document, to have signed it in
18 or around May of 1993?

19 A. Yes.

20 Q. Okay. If you look at the
21 signature block for Mr. Beber, he's
22 indicated as having signed this document
23 on behalf of W.R. Grace & Co. Do you see
24 that?

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1 MR. BROWN: Actually, it's
2 the same on these, on this
3 particular document, but OB 30 and
4 31.

5 Q. Do you recognize any of the
6 signatures that appear on either of those
7 pages?

8 MS. HARDING: You mean the
9 names of the people that have
10 signed or the actual signatures?

11 MR. BROWN: The latter.

12 A. The signature of Robert H.
13 Beber appears to be his signature, not --
14 I can't say that conclusively, but --

15 Q. Do you recognize --

16 A. -- it looks familiar.

17 Q. Do you recognize the
18 signature of Mr. Posner?

19 A. I don't.

20 Q. Who are the parties to the
21 agreement?

22 MS. HARDING: Object to
23 form and object to the extent that
24 he's testified that he's never seen

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1 MS. HARDING: Which?

2 A. Yes.

3 MS. HARDING: Wait a
4 minute. What page? 30 or 31?

5 MR. BROWN: OB 30.

6 MS. HARDING: Right, I just
7 wanted to make it clear that he
8 appears to be in two different
9 places.

10 MR. BROWN: I'm focused on
11 the first signature on OB 30.

12 MS. HARDING: Page 30, all
13 right.

14 Q. The company that was called
15 W.R. Grace & Company in May of 1993 has a
16 different name today, doesn't it?

17 A. I believe that's correct.

18 Q. Okay. And the name is
19 Fresenius Medical Care Holdings, Inc., is
20 it not?

21 A. I don't know the answer off
22 the top of my head.

23 Q. Okay. Let me direct you to
24 a few things in the Plan. I'd like you to